

PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	Bush, <i>et al.</i>)	
)	
Serial No.	:	10/520,360)	
)	Group Art Unit:
Filed	:	January 5, 2005)	1612
)	
For	:	CRYSTALLINE 2,5-DIONE-3-(1-)	
		METHYL-1H-INDOL-3-YL)4-[1-)	
		(PYRIDIN-2 -YLMETHYL)PIPERIDIN-4-)	
		YL]-1H-INDOL-3-YL]-1-PYRROLE)	
		MONO-HYDROCHLORIDE)	
)	Examiner:
)	S. Qazi
)	
)	
Docket No.	:	X-14484)	Confirmation # 5540

PETITION UNDER 37 CFR §1.183 FOR SUSPENSION OF RULES

Petition, Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

According to 37 CFR §1.183:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in §1.17(f).

On March 2, 2010, Applicants submitted an Information Disclosure Statement. The single reference cited on the IDS was cited by a foreign patent office in an action dated February 9, 2010, and provided to Applicant on February 16, 2010.

37 CFR 1.704 (d) states:

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

Applicants did not delay submitting the reference outside of the 30 day requirement. Applicants have submitted such a statement to the Examiner for consideration of entry as an “accompanied” document since the Examiner erroneously denied the entry of the IDS as required under 37 CFR 1.97 (the denial is also concurrently petitioned to the Director).

The purpose of requiring an applicant to submit a statement under 37 CFR §1.704(d) is to promote early submission of such foreign discovered references to avoid prosecution delay. As such, since Applicants did in fact submit within 30 days and since the IDS has not been entered, the statement should be considered an “accompanying” document for entry with the IDS.

If the Examiner does not enter the statement, in the alternative, Applicants respectfully request that the rule under 37 CFR §1.704(d) be suspended.

If the Director has any questions, or would like to discuss any matters in connection with this application, she is invited to contact the undersigned at (317) 277-3537. Please charge any fees or credit any overpayment in connection with this application which may be required by this or any related paper to Deposit Account No. 05-0840.

Respectfully submitted,

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July 2, 2010